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SECSTATE PLEASE PASS TO US TRADE REPRESENTATIVE

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SUBJECT: MOL CONSIDERS LABOR REFORM; UNIONS URGE RESIGNATION

11. (SBU) Summary: Meeting in Guayaquil with USTR and Department of State officials, two key Ecuadorian labor leaders stated they will challenge the recently published executive decree on subcontracting as unconstitutional, and also repeated a call for Minister of Labor Raul Izurieta's removal from office. They also will file a complaint with the ILO and the Inter-American Court of Human Rights regarding a decision by Ecuador's Constitutional Tribunal on the Civil Service Law, which they feel violates collective bargaining rights. Izurieta told USTR, DOL, and State Department representatives in Guayaquil that he was working on promoting labor code reform, but was facing difficulties in getting the labor sector engaged. He implied he might propose legislation permitting sector-wide unions, but did not react to other proposed reforms. End Summary.

Union Leaders Unhappy With Subcontracting Decree

12. (SBU) On October 26, William Clatanoff, AUSTR for Labor; Michael Puccetti, WHA/PPC; Greg Maggio, DRL/IL; and LabOff met three labor leaders in Guayaquil to discuss the recently-issued Presidential decree on subcontracting and prospects for further labor law reform in the country. Jaime Arciniegas, President of the labor federation CEOSL; and Guillermo Touma, president of the labor union, FENACLE; were accompanied by Patricio Contreras, AFL-CIO Solidarity Center representative. The three were in Guayaquil to participate in protests against the fifth round of negotiations of the Andean Free Trade Agreement, held between October 25th and 29th.

13. (SBU) Arciniegas, Touma and Contreras expressed displeasure with the content of the decree and stated that they would file a lawsuit charging that the document violates Ecuador's constitution. They were particularly opposed to Article 9, which states that subcontracting can be used for "indefinite" periods of time. They also believe that the 75% cap on subcontracting at any individual primary company will not protect workers against employer abuse and, furthermore, is contradicted in the same article by a phrase that says workers can be subcontracted indefinitely to do the primary work of a company "in part or in total." The unions had previously proposed to the Ministry of Labor a 15% cap on subcontracted workers. The three also asserted that because there is no Ecuadorian law on subcontracting, it is unconstitutional to regulate this activity by means of an executive decree. They did not bring up the provision in the decree that allows "natural persons" to act as subcontractors in the agriculture sector. When asked, they stated they were very concerned it could be used as a legal loophole by companies. On the positive side, the three conceded that the decree at least represents a first attempt to regulate subcontracting and prohibits employers from hiring false subcontractors directly linked to company management.

14. (SBU) Arciniegas and Touma expressed concern that the decree had never been submitted for review to the National Labor Council, which was set up in March 2004 to coordinate input from workers, employers and the government on labor law reform and related developments. While the President and Minister of Labor (MOL) met with trade union leaders, including Arciniegas, to discuss earlier versions of the decree, they now asserted that labor's positions and suggestions were not taken into account. Furthermore, they said, the MOL had not responded to their recommendations and had failed to show them the final version of the text before it was published in the official register. They said the labor movement is considering mobilizing workers to protest the decree and may even call for a national strike and an international campaign to draw attention to the situation. They repeated their call for Izurieta's removal, asserting that he represents the nation's business interests rather than its workers.

15. (SBU) Arciniegas and Touma also voiced concerns about the Constitutional Tribunal's ruling on the Civil Service and Administrative Career Law. The Tribunal classified the law as "organic" in a ruling published in the Official Register on September 28. This means the law overrides the labor code. With no additional recourse since the Tribunal has

ruled, the union leaders stated they would be making formal complaints to the ILO and the Inter-American Court of Human Rights. The unions believe this new law, passed in January 2004, takes away public sector workers' right to collective bargaining by setting maximum salaries (while still allowing them to form a union). Under Ecuadorian law, manual laborers are defined as "workers" and those that do intellectual tasks as "employees." "Workers" have the right to collectively bargain under the labor code, while "employees" fall under the Civil Service Law, which prohibits collective bargaining. Union leaders feel the government is labeling many who should be "workers" as "employees" to deny them collective bargaining rights.

16. (SBU) Arciniegas said that MOL Izurieta had refused a request by cut flower sector workers to form an industry-wide union. Touma stated that there had been no repeat of violence similar to what occurred at the Los Alamos plantation. He said this was due to USG attention to labor issues in Ecuador.

Minister of Labor Accepts Responsibility for Labor Code Reform

17. (SBU) In a meeting on October 26 with AUSTR Clatanoff, ADUS Jorge Perez-Lopez (USDOL), PolCouns and LabOff, Clatanoff made clear that he believed that the US Congress would not pass a Free Trade Agreement (FTA) without Ecuador reforming its Labor Code to make it ILO-consistent. Perez-Lopez and Clatanoff told Izurieta of a meeting they had had with an Inter-American Development Bank staff member, who stated there were funds available for a Labor Code reform project. Post is also working on putting MOL staff in contact with AID to discuss AID-funded Trade Capacity Building projects.

18. (SBU) Izurieta agreed that additional labor reforms are desirable, but complained that labor union leaders had perspectives that were out of date and were unwilling to negotiate in good faith with him. Izurieta urged the Embassy to intervene and speak with labor leaders to convince them to come to the table for Labor Code reform. Clatanoff offered to return to Quito in November to speak with union leaders, business leaders and the National Labor Council, an idea that pleased Izurieta. Clatanoff told Izurieta that unions' total acceptance of Labor Code reform was not necessary; more importantly, he said, the reforms needed to be ILO-consistent.

19. (SBU) Izurieta said the National Labor Council was currently working on a forthcoming Presidential decree regulating the hiring of workers paid by the hour. Izurieta feels there is strong support from all sectors for this regulation. Izurieta seemed to react positively to Clatanoff's suggestion to permit industrial or sector unions such as the flower-industry union Touma discussed in the earlier meeting, although he claimed this would require legislative reforms. Sector-wide unions could serve to provide freedom of association to subcontracted workers who do not meet the 30-person legal minimum to organize a stand-alone union. Izurieta did not react to other possible labor code reforms suggested by Clatanoff, including reinstatement of workers fired for union organizing and prohibition of hiring discrimination against union members.

110. (SBU) In meetings with the Ecuadorian business community and President of Congress Guillermo Landazuri, AUSTR Regina Vargo highlighted the importance of labor reform to building US Congressional support for an FTA with Ecuador. Both business leaders and Landazuri understood and accepted her point. Surprisingly, business leaders did not return to their well-known objections to the subcontracting decree in the meeting, focusing instead on the need to move forward on labor reform, and on their other FTA concerns.

Comment

111. (SBU) While labor code reform will not be easy, to have any chance, Izurieta must show greater leadership. We will continue to push for cooperation with partners such as the ILO and IDB, which will also be crucial for this endeavor. However, coordination with union leaders will be a challenge. The signing of an FTA may be an incentive for the GOE to pass labor code reform. The business community, which expects labor reform to result in a more dynamic and competitive labor market, can be an important force supporting reform. Union leaders, who oppose the FTA and any increase in labor market flexibility, are unlikely to be supportive.
KENNEY